STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS, LOCAL 214,
Respondent-Labor Organization,

Case No. CU01 K-061

-and-

OREE RHODES, III,
An Individual Charging Party.
_______________________________________/

APPEARANCES:

Rudell & O'Neill, P.C., by Wayne A. Rudell, Esq., for the Labor Organization

Oree Rhodes, III, *in pro per*

DECISION AND ORDER

On March 14, 2003, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by any of the parties.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: ______

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DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was heard at Detroit, Michigan on March 11, 2002, before David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings, transcript and exhibits, as well as the post-hearing briefs filed by the parties on or before April 29, 2002, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On November 19, 2001, Oree Rhodes, III, filed an unfair labor practice charge against his bargaining representative, Teamsters, Local 214. The charge, as clarified in a bill of particulars filed on February 22, 2002, and at the March 11, 2002, hearing, alleges that the Union violated its duty of fair representation by failing to properly investigate the merits of a grievance concerning Rhodes' termination from employment with the Detroit Public Schools, and by refusing to process that grievance to arbitration.

Findings of Fact:

Charging Party was employed by the Detroit Public Schools as an auto repairperson at the school district's Westside Bus Terminal. The school district has a 96% attendance standard. Work rules promulgated by the district include the following language pertaining to tardiness and absenteeism:

1. All employees are expected to report for duty every working day. Excessive tardiness or absenteeism will not be tolerated.

2. Each employee must notify his/her administrator-in-charge of intended absence within the time limitation specified.

3. Each employee must observe working hours scheduled (starting time, quitting time, lunch hour, and preparation periods).

Throughout 1999, the school district issued three written warnings to Charging Party concerning allegations of excessive absenteeism, tardiness and failure to follow established call-in procedures. A disciplinary hearing was held on December 13, 1999, at which Rhodes was represented by his union steward. The hearing resulted in a three-day suspension without pay. Charging Party was notified of the suspension via letters from the school district dated February 3 and 4, 2000. The February 3rd letter indicated that Rhodes had been absent a total of 43 days from February 1, 1999 to October 12, 1999, of which 38 days were without pay. In the February 4th letter, the school district warned Rhodes that more severe disciplinary action, including termination, would be considered if "any future charges should be substantiated." Both letters were timely received by Charging Party.

On April 18, 2000, a meeting was held between Charging Party, his union steward, and the school district's fleet manager to address allegations that Rhodes' attendance had not improved since his suspension earlier in the year. The meeting resulted in a recommendation that further disciplinary action be taken by the school district against Charging Party. The school district notified Charging Party about the recommendation by letter the same day. The letter and attached documentation, which Charging Party received in a timely manner, indicated that Rhodes had missed 71 days of work during the period August 30, 1999 to April 7, 2000, including 37 days without pay. The letter also contained a warning that "[e]xcessive tardiness or absenteeism will not be tolerated."

On May 11, 2000, the school district wrote to Charging Party again alleging that his attendance had not improved following his three-day suspension. According to the letter, Rhodes had worked only 15 full days of 66 possible workdays during the post-discipline period. The school district concluded the letter by warning Charging Party that "further corrective actions is [sic] warranted." Although the letter was addressed to Rhodes, it was incorrectly sent to his father's residence.

The school district scheduled corrective disciplinary hearings for June 15, September 15 and December 15, 2000 to discuss Charging Party's behavior. Rhodes did not appear at any of the hearings, nor did he call the school district to explain his absence.

In a letter dated January 22, 2001, the Acting Director of the school district's Office of Discipline Administration wrote to Charging Party and indicated that she would be submitting a recommendation to the Chief Executive Officer to terminate Rhodes' employment. This recommendation was based upon the following findings of fact as set forth by the school district in the letter:

> You were suspended without pay on February 8, 9, and 10, 2000 because of your previous violations of Work Rule #1.
>
> The attendance summary . . . which is uncontradicted by you, shows that after your return from that suspension you had 19 illness absences and 14 absences without pay in a period of 66 work days. Of the days that you did come to work, you were late on 11 occasions. Furthermore, on more than half of the 19 illness days that you used, you failed to follow the required call-in procedures. There is sufficient evidence to find that you violated Work Rules #1, #2, and #3.

Once again, the school district incorrectly mailed the letter to the home of Charging Party's father.

On January 23, 2001, the Executive Director of Human Resources for the Detroit Public Schools notified Charging Party in writing that his employment with the school district was terminated. This letter was sent to Rhodes' correct mailing address and received by him in a timely manner. Attached to this communication was a copy of the letter written by the school district on the previous day.

On January 31, 2001, Rhodes filed a grievance challenging his termination. In the grievance report, Rhodes asserted that the termination was not for just cause, and he complained that he was never notified of any corrective disciplinary meetings which he might have missed. On February 1, 2001, Respondent informed the school district of its intent to advance the matter to step two of the contractual grievance procedure.

A step-two hearing was held on February 27, 2001. At the hearing, Charging Party argued that he did not receive the May 11, 2000, and January 22, 2001, letters from the school district until after his termination. However, he presented no evidence challenging the school district's attendance records, nor did he offer any justification for his violation of the district's work rules. Following the step-two hearing, the Union's chief steward advised Charging Party that his attendance record was bad and that he needed to come up with documentation to dispute it in order for Respondent to be able to assist him in getting his job back.

The school district denied Charging Party's grievance on March 20, 2001. Thereafter, the Union's grievance panel scheduled a meeting to review the matter and determine whether to process the grievance to arbitration. Prior to that meeting, Respondent's business agent asked Charging Party to provide evidence which would allow the Union to challenge the school district's attendance records. Once again, Rhodes failed to provide the necessary documentation. In a letter dated March 28, 2001, Respondent notified Rhodes that the grievance panel had determined that his termination was for just cause and,

therefore, the grievance would be withdrawn.

On April 4, 2001, Rhodes exercised his right to appeal the decision of the grievance panel. The Union's appeals board met to discuss the matter on May 19, 2001. At the meeting, Rhodes once again argued that he had not received notification of the disciplinary proceedings which the school district had implemented against him. In a letter to Rhodes dated May 24, 2001, the appeals board indicated that it had considered the allegations of improper notice, but that it could not go forward with the grievance without evidence to challenge the school district's attendance records or explain his behavior:

> [W]e find it very difficult to justify how within a 66-day period prior to your termination, you were absent 19 times, 14 of which were unpaid. It seems to us that if you were going to be off work and truly interested in keeping your job, you would have at least presented some documentation justifying these absences. We can find none in your file, you mention none, and apparently you offered none to the School Board.
>
> We believe that the employer gave you ample opportunity to correct your attendance deficiencies, that you did not avail yourself of those opportunities, and that the discipline was justified. The grievance is therefore denied.

As noted, Rhodes filed an unfair labor practice charge against Teamsters, Local 214, on November 19, 2001. At the hearing in this matter, Rhodes conceded that his attendance record might have actually been worse than as set forth in the January 22, 2001, letter referred to above.

Discussion and Conclusions of Law:

A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171, 177; 87 S Ct 903; (1967); *Goolsby v Detroit*, 419 Mich 651(1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123, 146; 82 LRRM 341 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. Because the union's ultimate duty is toward the membership as a whole, a union may consider such factors as the burden on the contractual machinery, the cost, and the likelihood of success in arbitration. *Lowe*, *supra*. A union satisfies the duty of fair representation as long as its decision was within the range of reasonableness. *Air Line Pilots Ass'n, Int'l v O'Neill*, 499 US 65, 67; 136 LRRM 2721 (1991); *City of Detroit, Detroit Fire Dep't*, 1997 MERC Lab Op 31, 34-35.

Rhodes contends that Respondent violated the duty of fair representation by failing to properly investigate the circumstances leading to his termination from employment with the Detroit Public Schools. However, he does not identify what additional information would have been revealed had there been a more thorough investigation, or how such evidence might have changed the result of his case. The record indicates that Respondent was aware of Charging Party's allegations that the school district had not

properly notified him of the ongoing disciplinary proceedings. Rhodes himself raised that subject at the February 27, 2001, grievance meeting, and again during Respondent's internal grievance appeal process. The Union considered the notice issue in deciding whether to take the grievance to the next step and determined that it would not have any impact on whether the grievance would be successful. Given Charging Party's apparently dismal attendance record, the fact that he had previously been disciplined for violating work rules pertaining to absenteeism and tardiness, and his failure to provide the Union with any exculpatory or mitigating evidence concerning his excessive absenteeism, I conclude that the Union's decision to withdraw his grievance was neither irrational nor arbitrary.

For the forgoing reasons, I find that Charging Party has failed to establish that Respondent breached its duty of fair representation under Section 10(3)(b) of PERA and recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz
Administrative Law Judge

Dated: ____________